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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY WILLIAM SANDS,

Plaintiff - Appellant,

v.

THE KROGER CO., erroneously sued as
Kroger Manufacturing,

Defendant - Appellee.

No. 07-56602

D.C. No. CV-06-06915-RGK

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted February 18, 2009 **

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Former attorney Henry William Sands appeals pro se from the district court's summary judgment in favor of The Kroger Co. in his action alleging race and age discrimination in violation of the California Fair Employment and Housing

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Act, Cal. Gov't Code § 12940 *et seq.* We have jurisdiction under 28 U.S.C.

§ 1291. We review de novo a district court's grant of summary judgment, *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 269 (9th Cir. 1996), and we affirm.

The district court properly granted summary judgment because Sands failed to produce specific and substantial evidence creating a genuine issue of material fact as to whether The Kroger Co.'s proffered reasons for not hiring him as an Information Systems Technologist were pretextual. *See id.* at 270 (the plaintiff bears the ultimate burden of persuading the court that the stated reasons why he was not hired were false and the true reason was unlawful discrimination).

AFFIRMED.